

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक

C.A. 903/2002

सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>Criminal Appeal No.903 of 2002</u>	
	<u>APPELLANT</u>	Komal @ Kamalnarayan s/o Chhabilal Dhruva, aged about 29 years, r/o village Rajpur, P.S. Magarload, Distt. Dhamtari (C.G)
	<u>RESPONDENT</u>	<u>Versus</u> State of Chhattisgarh, Police Station Magarload Distt. Dhamtari (C.G)
	<u>Appeal u/s 374(2) of the Code of Criminal Procedure</u>	
	<u>Appearance:</u> Shri Ratindra Mishra, counsel for the appellant. Shri D.K. Gwalre, Govt. Advocate, for the State.	
	DB: Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Sunil Kumar Sinha, J,J,	
	<u>ORAL JUDGMENT</u> (27.7.2007)	
	<u>L.C.Bhadoo, J,</u> Heard.	
	(1) This appeal is directed against the judgment of conviction and order of sentence dated 26.6.2002 passed by the Addl. Sessions Judge, Dhamtari, in Sessions Trial No.46/2001 whereby the learned Addl. Sessions Judge, after holding the accused appellant guilty for commission of offence u/s 302 I.P.C., for committing murder of his uncle Chhabilal, sentenced him to	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 903 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	undergo imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for year. (2) The case of the prosecution in brief is that on 04.9.2000 at about 10.30 a.m. in village Rajpur, the deceased Chhabilal, paternal uncle of the accused, was sitting in the house. The accused was suspecting that Chhabilal was having illicit relations with his mother Hathiari Bai, therefore, he picked up a piece of wood (fuel wood) and assaulted 10-12 times on the head of Chhabilal, as a result of which the skull bone was fractured into parts, the brain matter came out and Chhabilal died spontaneously. The matter was reported by Govind (P.W.9) to Police Station Magarload under <i>merg</i> intimation Ex.P.12. Based on that, the First Information Report Ex.P.13 was registered. The investigating officer left for the scene of occurrence and after giving notice Ex.P.3, prepared inquest Ex.P.4 on the body of Chhabilal. The site plan Ex.P.1 was prepared by Halka Patwari. Ex.P.2 was prepared by the Investigating Officer. The investigating officer seized the weapon of offence i.e., the fuel wood under Ex.P.6. The body of Chhabilal was sent for Postmortem to Primary Health Center, Magarload vide Ex.P.14 where Dr.K.K. Som (P.W.8) conducted postmortem. He gave the report Ex.P.9 and opined that the cause of death was coma as a result of head injury due to excessive hemorrhage from Maningiece, blood vessels and capillary. The nature of death was homicidal. After completion of investigation, charge sheet was filed in the Court of Judicial	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. 903 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Magistrate First Class, Dhamtari, who in turn committed the case to Sessions Judge Raipur, from where, the learned Addl. Sessions Judge, received the case on transfer for trial. (3) The prosecution in order to establish the charge against the accused examined 10 witnesses. The statement of the accused was recorded u/s 313 Cr.P.C., in which he denied the material appearing against him in the prosecution evidence and pleaded that he is innocent. (4) The learned Addl. Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as aforesaid. (5) We have heard Shri Ratindra Mishra, counsel for the appellant and Shri D.K. Gwalre, Govt. Advocate, for the State. (6) At the outset, learned counsel for the appellant has not disputed the homicidal death of Chhabilal. Moreover, Laxman (P.W.2), real brother of the accused and Hathiarian Bai (P.W.4), mother of the accused have categorically stated that the accused attacked with piece of wood (fuel wood) on the head of Chhabilal, as a result of which, he sustained injuries and died spontaneously. These witnesses are real brother and mother of the accused and in their cross examination, the defence has not been able to elicit any circumstance. Moreover, the evidence of these witnesses finds corroboration with medical evidence of Dr.K.K.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 903 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Som (P.W.8) who conducted postmortem and stated that there were 3 lacerated wounds on the head of the deceased, as a result of which the frontal, occipital & temporal bones were fractured and the death was homicidal in nature. Therefore, from the above ocular and medical evidence, it is established that the death of Chhabilal was homicidal in nature. (7) As far as the involvement of the accused in crime in question is concerned, P.W.2 Laxman, the real brother & P.W.4 Hathiarin Bai, mother of the accused have categorically stated that the accused assaulted the deceased with a piece of wood on the head, as a result of which Chhabilal sustained head injuries, the skull bone was fractured and the brain matter came out. The above evidence of these eye witnesses is corroborated by the medical evidence of Dr. K.K. Som (P.W.8) and even in the cross examination the defence has not been able to elicit any circumstance which may discredit the evidence of these witnesses, therefore, the involvement of the accused in crime in question is established beyond reasonable doubt. In fact, P.W.2 Laxman, is his real brother, P.W.4 is the mother of the accused, there was no occasion for them to implicate the accused in false case, that too, in connection with the murder of his paternal uncle. Therefore, the finding of the trial court regarding complicity of the accused appellant in crime in question is established based on legal, cogent and admissible evidence. Therefore, we do not find any	

(22)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CR.A. NO. 903 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	illegality or infirmity in the findings of the trial Court to that extent. (8) Shri Mishra argued that the accused was suspecting the illicit relationship of deceased Chhabilal with his mother and when Chhabilal came to their house, he sat there and Chhabilal & Laxman were talking then he thought that they were talking about him. He picked up the fuel wood lying there and assaulted the deceased. He further argued that as per the evidence of P.W.2 Laxman(brother) and P.W.4 Hathiarian Bai (mother), the accused used to behave like an insane, therefore, the trial Court incorrectly came to the conclusion that the accused was not suffering insanity at the time of commission of crime. It is true that P.W.2 Laxman and P.W.4 Hathiarian Bai in their cross examination have stated that the accused used to behave like an insane person and he used to give beating but they are the real brother and mother of the accused and apart from the above evidence, there is no other independent evidence or material on record, which establishes the insanity of the accused at the time of commission of crime. The A.S.I., Mr. S.M. Tiwari (P.W.10) has not been cross-examined on this aspect that he was informed about the mental condition of the accused regarding his insanity. Moreover, during the trial this point was raised before the trial Court and the trial Court sent the accused for examination. On this, Dr. A. Qadir and D.S. Deo have stated that they had kept the accused under observation from 20-6-2001 to 30-6-2001 and during that period, they found that	

मामला क्रमांक CSA NO. 903 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	the behaviour of the accused was normal, except that his memory was weak. They gave Certificate C-1 to that effect. There is no evidence that he was being treated for insanity. Therefore, without any cogent material available on the record, it cannot be said that the accused was suffering from insanity. (9) In order to take benefit of Section 84 IPC, there must be legal evidence on record to show that the accused was suffering from legal insanity. The benefit of this section is available only after it is proved that at the time of commission of the act; the accused was labouring under such a defect or reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then the benefit of this section must be given. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. (10) As has been discussed in the present case, except the oral statement of the brother and mother of the accused in the cross	

24

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CR.A.NO. 903 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	examination, there is no material, as has been discussed earlier, on the record to establish that at the time of commission of crime, he was suffering from insanity. Now coming to the question that he used to suspect the illicit relationship between his mother and paternal uncle Chhabilal, the mother of the accused has been examined as P.W.4 and at the time of her examination, she has disclosed her age to be 75 years. This does not sound to be a reason that at this age, any lady will have illicit relationship with her brother-in-law. If we look into the nature of injuries, the accused had mercilessly attacked the deceased, as a result of which, frontal, parietal and occipital; bones were fractured, brain matter came out and he died spontaneously. Therefore, the intention of the accused to cause death of Chhabilal was writ large. (11) In the result, we do not find any substance in this appeal. The appeal is liable to be dismissed and it is accordingly dismissed.	
Rao	Sd/- L.C.BHADOO Judge	Sd/- Sunil Kumar Sinha Judge